

**CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL  
ALLAHABAD**

REGIONAL BENCH - COURT No. I

**Service Tax Appeal No.70541 of 2018-Division Bench**

(Arising out of Order-in-Appeal No.15-GBN-EXST-APP-17-18 dated 13/03/2018 passed by Commissioner (Appeals) Central Tax, GST & Central Excise, Meerut)

**M/s Raj Kumar Tyagi**

**.....Appellant**

(SD-164, Shastri Nagar, Ghaziabad)

*VERSUS*

**Commissioner of CGST, Ghaziabad**

**....Respondent**

(CGST, Ghaziabad)

**APPEARANCE:**

Shri Rajesh Chhibber, Advocate for the Appellant

Shri Shiv Pratap Singh, Authorised Representative for the Respondent

**CORAM:**

**HON'BLE SMT. ARCHANA WADHWA, MEMBER (JUDICIAL)**

**HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)**

**FINAL ORDER NO.- 71322 / 2019**

Date of Hearing : 04 July, 2019

Date of Decision : 04 July, 2019

**PER: ARCHANA WADHWA**

The appellant was providing construction services to Ghaziabad Development Authority alongwith paying service tax on the said activities. Matter was investigated against them and they were advised to pay duty in respect of said services during the period April, 2005 to March, 2007. Accordingly appellant paid the said dues, under the advice of the officers in the year 2010 by way of various challans. However while paying the duty under the cover of around ten challans alongwith interest they

endorsed all the invoices that the said duty is being paid under protest.

2. Thereafter with the outcome of the Hon'ble Supreme Court decision in the case of Commissioner of Central Excise & Service Tax, Kerala vs. Larsen & Toubro Ltd. 2015 (39) S.T.R. 913 (S.C.) laying down that works contract services would attract duty liability with effect from 01/06/2007 only, the appellant approached the Revenue for refund of the said amounts by submitting that the services provided by them to Ghaziabad Development Authority were works contract services and as such were not taxable.

3. In the above background, proceedings were initiated against the appellant proposing to deny the refund claim on the grounds that the services provided by them to Ghaziabad Development Authority were not works contract and refund claim is hit by bar of limitation. During the course of adjudication as also Appellate process, the appellant produced on record the works contract as also the statement of Ghaziabad Development Authority to substantiate their plea that the services provided by them were works contract. As regards the limitation they submitted that as the duty was deposited under protest, the limitation aspect would not apply.

4. Lower Authorities did not find favour with the assessee's contention. As regards works contract, it was observed that the appellant have not established beyond doubt that composite works contract were issued to them and the same were indivisible. On the other hand it is the appellant contention that the works contract were specifically placed on record alongwith certificate from Ghaziabad Development Authority establishing beyond doubt that contracts were works contracts.

As regards limitation it is seen that though the Lower Authorities have observed that the duty was paid under protest, they referred to a letter dated 14/12/2010 addressed by the

appellant to the Superintendent (Audit) Central Excise Commissionerate, Ghaziabad indicating that they are withdrawing their protest against the pre-deposit amounts. As such the Revenue contended that inasmuch as the protest was withdrawn by the appellant, refund claim filed on 18/07/2016 is beyond limitation.

5. We have seen the said letter dated 14/12/2010, which is being referred to and relied upon by the Revenue. We find that there is no signature of any authorized representative of the Revenue showing the receipt of the same. Learned advocate explains that inasmuch as the appellant used the expression "under protest" on the challans depositing the duty amount, which were between the period 11/12/2010 to 13/12/2010, their jurisdictional range authorities advised the appellant to withdraw the protest. The appellant under pressure and under the fear of said advice given by the officers wrote a letter on 14/12/2010 itself i.e. on the next date of deposit of the amounts withdrawing their protest. When the said letter was taken to the office of the Superintendent, he did not accept the same and the said letter was returned to them. The Lower Authorities have not advanced any evidence to show that the said letter was actually filed by them. On the contrary Commissioner (Appeals) has observed that the assessee has not produced any evidence to establish that the same was not filed.

6. We find that the negative onus to establish that the letter was not filed with the Revenue cannot be put on the assessee. It is the Revenue who is insisting that the said letter was filed and as such it is for them to establish that the same was actually filed.

7. Otherwise also, we find that the deposit of dues was during the period 11-13 December, 2010, the challan have clearly mentioned payment of duty under protest. It seems to be an uncalled behavior of any reasonable prudent person to withdraw the protest immediately on the next date of payment i.e. on

14/12/2010 unless there is a specific reasons to do so. The explanation offered by the appellant that they were directed to do so by the range authorities seems plausible explanation. As such, we conclude that apart from fact that there is no evidence of receipt of the said letter in the office of the Superintendent or Assistant Commissioner, the said letter has to be interpreted as being under coercion and pressure from the Revenue and not from free will of the appellant. As such, we hold that the duty having been deposited under protest in the challans itself, the refund claim cannot be held to be barred by limitation.

8. However said refund claims are sustainable only if the appellant's services to Ghaziabad Development Authority fall under the category of 'works contract'. The said aspect requires verification and examination by the Lower Authorities from the contracts entered between the two as also from the certificate issued by the Ghaziabad Development Authority read with definition of works contract. Accordingly for the said limited purpose, we set aside the impugned order and remand the matter to the Original Adjudicating Authority. The appellant would be given an opportunity to put forth their case.

(Dictated and pronounced in open court)

**Sd/-**  
**(Archana Wadhwa)**  
**Member (Judicial)**

**Sd/-**  
**(Anil G. Shakkarwar)**  
**Member (Technical)**

*Lks*